

Title Guaranty Division Board Meeting Minutes

June 14, 2005

Board Members Present:

Walter Murphy
Berneil Pruel
Mitchell Taylor
Surasee Rodari
Catherine Hult (by phone)

Staff Members Present:

Loyd Ogle, Title Guaranty Director
Matt White, TGD Deputy Director
Dennis Dietz, IFA Director of Governmental
Affairs & Policy
Tim Jansen, IFA Accountant
Linda Berg, TGD Business
Development Director
Susan Riedinger,
Administrative Assistant

Others Present:

Steven Sents – Attorney/Abstractor, Newell and Sents, Columbus Junction
John Eisenman – President, Iowa Land Title Association
Tom Anderson – Attorney, Harlan
Dwight Dinkla – Executive Director, Iowa State Bar Association

Call to Order

Chairman Mitch Taylor called the June 14, 2005, meeting of the Title Guaranty Board of Directors to order at 1:12 p.m.

New Attorney General Opinion

Mr. Ogle reported to the Board on the new Attorney General opinion that Title Guaranty received concerning attorney abstracting before the abstractor's waiver requests were considered. He said that Title Guaranty was approached by attorneys Charles Augustine and David Dunakey about a waiver that this board had granted them on the 40-year plant requirement. When the board approved that waiver, they geographically limited their abstracting to Black Hawk County. Augustine and Dunakey want to abstract in two counties adjacent to Black Hawk County. The attorneys believed that the Board did not have the authority to geographically limit the waiver for attorneys. This question was submitted to the Attorney General's office for a legal opinion. The Attorney General's opinion states that if an attorney requests a waiver from the Board and is granted that waiver, the Board does not have the ability to limit them geographically to a specific county. Mr. Taylor noted that if the Board grants a waiver to an attorney, that attorney can now abstract anywhere in the state.

Mr. Taylor noted that the Attorney General's opinion was a fine opinion and that hopefully it will open the door for more abstractors available for each county.

Mr. Dietz advised that until some court changes the opinion, Title Guaranty as a state entity has to follow that opinion.

Review & Approval of Board Meeting Minutes

Motion: On a motion by Mr. Rodari, seconded by Ms. Pruel, the Board unanimously approved the March 1, 2005, Board meeting minutes.

Review & Approval of Financial Reports

Mr. Jansen explained the narrative portion of the financials to the Board members.

Mr. Ogle said that that Title Guaranty had set a goal of \$5 million in revenue for the past fiscal year, and we will come in about on target. Some expenses were higher than anticipated, and claims were a little higher than originally budgeted for. The goal was to transfer \$3 million to the Iowa Finance Authority's housing programs. Actual transfers will be about \$2.8 million.

Mr. Jansen recommended to the Board that they transfer \$545,000 to the housing programs.

Motion: On a motion by Mr. Murphy, seconded by Ms. Hult, the Board unanimously approved the February 2005, March 2005, and April 2005 financials.

Transfer of Funds to IFA's Housing Programs

Motion: On a motion by Ms. Pruel, seconded by Mr. Murphy, the Board unanimously approved the transfer of \$545,000 to the Iowa Finance Authority's Housing Programs.

Mr. Jansen informed the Board that the Fiscal Year 2006 budget was included in their packets. Title Guaranty plans on transferring \$2.5 million to the housing programs fund next year, which is down about \$700,000 from what was forecast in Fiscal Year 2005.

Mr. Ogle said that Title Guaranty has earmarked \$150,000 for the marketing campaign and web page development, \$100,000 in the marketing budget and \$50,000 for capital improvements.

Abstractor Waivers

Mr. Anderson explained why he wanted a waiver of the 40-year tract index. He does not personally want to do abstracting. He wants the abstractors who are already participating in Title Guaranty do the abstracting as if it were a subcontracting job. The abstract would be in electronic form so that it can be malleable and adjustable. Mr. Anderson then made his business case. He said that he was trying to compete with title insurance companies.

Mr. Taylor asked Mr. Anderson why he needed a waiver if he was going to use abstractors that either have a plant or are waived or grandfathered. Mr. Anderson replied that mortgage brokers like to see it on an individual one-stop shop, and there is no one-stop shop available at this time through abstractors. Mr. Taylor said that there was nothing to stop Mr. Anderson from setting up a one-stop shop other than ethics without the need to have a waiver.

At Mr. Ogle's request, Mr. Anderson walked the board through a typical transaction through his plan.

Mr. Murphy asked Mr. Anderson how his plan was different from an escrow and closing service. Mr. Anderson explained that if there is an escrow and closing service that was not owned by an attorney, then all the parts of the legal portion that gets it into Title Guaranty can't be performed. He said that by keeping it in one would keep costs down.

Mr. Taylor said that the standard for granting a waiver that Title Guaranty had to follow was that Mr. Anderson had to establish hardship and establish how the public would benefit by granting the waiver. He asked what the hardship would be and how the public would benefit. Mr. Anderson said that the cost of reproducing county records would be phenomenal and that if CLRIS comes along, the effort of putting all that out sunsets in a few years and it would have a limited useful life. Mr. Anderson said that there were two ways the public would benefit. First, it brings Title Guaranty into play and makes lenders comply with the law rather than subvert it. Second, abstracts are preserved and greater premiums come into Title Guaranty.

Mr. Eisenman spoke out against granting the waiver to Mr. Anderson. Mr. Eisenman said he did not think Mr. Anderson met the standards for waiving the 40-year title plant. He said the counties Mr. Anderson wants the waiver for are well served by existing Title Guaranty abstractors. He also said that Mr. Anderson does not need a waiver to become a one-stop shop. In answer to a question by Ms. Hult, Mr. Eisenman said that his objection to the waiver is that the area is already being served. He explained that his association has gone on record supporting waivers in the past, but in this case it has not been demonstrated that it is necessary or prudent to grant a waiver.

Mr. Dinkla said that his association is not opposed to the granting of waivers in general if that the standards were met by the applicant. He also said that Mr. Anderson has identified a problem that needs to be addressed in the future by the bar association and their industry.

Motion: Mr. Rodari made a motion to approve Mr. Anderson's application for waiver, which was seconded by Ms. Pruel. The Board then discussed their concerns about Mr. Anderson's application. The Board unanimously denied the application. Mr. Taylor requested a roll call. Upon the roll call, Mr. Taylor, Mr. Rodari, Ms. Hult, Ms. Pruel, and Mr. Murphy voted no.

The Board took a break at 2:22 p.m. and reconvened at 2:29 p.m.

Mr. Sents explained why he wanted a waiver of the 40-year tract index. He was before the Board asking for a waiver in 1994 or 1995, which had been denied. He said that his circumstances have changed now in that his partner is 83 years old, has experienced some physical difficulties, and plays a less prominent role in the office. Their abstracting continues full speed, utilizing the same staff. He said that all of Louisa County is in a similar situation with him. No one has a title plant in Louisa County. They have all gone to the courthouse to review the records and utilize the different offices to perform their searches. Mr. Sents said that if anything happened to his partner and he could not get his partner's signature, they could not perform the services necessary. He said that was his hardship.

The Board and Mr. Ogle questioned Mr. Sents on his application. Mr. Taylor asked Mr. Sents what the cost of creating a 40-year tract would be. Mr. Sents said that he did not know the cost. Mr. Taylor also noted Mr. Sents' support letters and asked Mr. Sents if anyone opposed his request. Mr. Sents responded in the negative. Mr. Ogle asked if Mr. Sents signed his abstracts under his partner, and Mr. Sents replied that he signed without Title Guaranty. Ms Preul asked Mr. Sents if he had been signing abstracts, to which Mr. Sents responded in the affirmative.

Motion: On a motion from Ms. Preul and seconded by Ms. Hult, the Board unanimously approved Mr. Sents' application for waiver.

Claims

Mr. White updated the Board on claims. He said that since the last Board meeting on March 1, the Division has had 17 new claims filed. Most were claims of prior liens. Title Guaranty is now involved in five trials on defensive claims.

Director's Report

Mr. Ogle introduced Ms. Berg to the Board. He said that Ms. Berg has about 12 years of experience in the lending industry. He also said that one of the keys to Title Guaranty's future is a much more aggressive marketing effort, both by the Division and by the Division's partners in the field. He noted the \$150,000 in the budget for the upcoming fiscal year for the marketing campaign. He said that the campaign will largely be modeled after an effort in Florida by the Florida Fund. He explained that Ms. Berg will help flesh out the details in the marketing plan.

Mr. Ogle said that Title Guaranty will hit its \$5 million goal in terms of revenue targets for the year. Title Guaranty will be shy of a couple of hundred thousand dollars granted to IFA's housing programs. The Division hoped to transfer \$3 million, and it looks like it will transfer \$2.8 million.

Mr. Ogle stated that he hoped that all certificates would be issued by attorneys online. That would free up processors to go in the field and do more training and

marketing. Right now, he said that the balance of the Division's work is division-issued certificates.

Mr. Ogle said through May \$2.8 million was transferred to IFA. Total transfers to date since inception is over \$36 million.

Mr. Ogle said the Division is seeing consistent use of the Mortgage Release Program. The Division has had almost 1,000 requests for releases since April 2000.

Ms. Hult signed off of the meeting at 2:53 p.m.

Ms. Berg addressed the Board. She said she has extensive experience in the settlement service area. The last few years, she has been involved in marketing settlement services through the real estate industry. She also told the Board she would welcome their suggestions and ideas on marketing.

Mr. Ogle said that in terms of the development of business models, people are moving toward a one-stop shop environment to be competitive and it is something that needs promoting.

Mr. Ogle noted that Title Guaranty's first annual conference is set for September 27.

Mr. Ogle raised the possibility of abstractors issuing certificates. He said he did not think it would be an issue, but with abstractors offering closing services, their issuing certificates would be something that made sense.

Mr. Ogle said that the fee structure would be looked at. He said overall that a dollar per thousand is as cheap as one could go in the industry. He said some of the competition is offering flat fees, which is to the disadvantage of lower-income purchasers buying less expensive homes. He said that the Division may come forward sometime with a different fee structure.

Legislative Update

Mr. Ogle informed the Board that the bill initiated by Title Guaranty with the support of the ILTA to license abstractors did not pass this year. He said that they did pass a bill that expanded abstractors' ability to use the Mortgage Release Program.

Mr. Ogle reminded the Board about the issue with agricultural homestead waivers. That had to do with the failure of an entity to get the notice of the waiver of a person's homestead rights signed on a piece of land that at least initially did not appear to be agricultural but in court proceeding was deemed by

the judge to be suitable for agricultural use. The bill passed in regard to this issue says that if the property is less than 40 acres, then it is not required to get that waiver signed. Mr. Ogle said that it not only took care of a liability issue for Title Guaranty but it gave good guidance for lenders, attorneys, and all parties involved in real estate.

Mr. Ogle said that a bill was introduced on title insurance, but there was no vote in the conference committees on that bill.

Miscellaneous Items

The Board discussed the 40-year waiver issue again, raising both its pros and cons.

The next meeting date will be September 13th, 2005, at 1:00 p.m.

Adjournment

Motion: On a motion by Mr. Rodari, seconded by Ms. Pruel, the Board unanimously voted to adjourn at 3:25 p.m.

Dated this 13th day of September, 2005,

Respectively submitted:

Approved as to form:

Loyd W. Ogle, Director
Title Guaranty Division

Mitch Taylor, Chair
Title Guaranty Division